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HOUSE BILL 268

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONSERVANCY DISTRICTS; REQUIRING ALL ELECTIONS  
WITHIN CERTAIN CONSERVANCY DISTRICTS TO BE BY MAIL-IN BALLOTS;  
PROHIBITING CERTAIN CONSERVANCY DISTRICTS FROM INCURRING  
CERTAIN DEBTS WITHOUT THE APPROVAL OF THE QUALIFIED ELECTORS OF  
THAT DISTRICT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-14-20 NMSA 1978 (being Laws 1975,  
Chapter 262, Section 3, as amended) is amended to read:

"73-14-20. DEFINITIONS. -- As used in Sections 73-14-18  
through ~~[73-14-32]~~ 73-14-30 NMSA 1978:

~~A. "absent voter" means a qualified elector who  
has requested an absentee ballot forty days prior to an  
election;~~

~~B. "absentee early voter" means a qualified elector~~

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1 ~~who has voted early, prior to election day, on an electronic~~  
2 ~~voting machine at a designated absentee early voter precinct;~~

3 ~~C.]~~ A. "benefited area" means that area described  
4 by a property appraisal that receives a benefit as a result of  
5 the creation of a district for any of the purposes specified in  
6 Section 73-14-4 NMSA 1978;

7 ~~D.]~~ B. "election director" means the person whom  
8 the board of directors may request to provide election services  
9 by a contract approved by the secretary of state;

10 ~~E.]~~ C. "election officer" means a person appointed  
11 by the board of directors to conduct the election in the  
12 absence of an election director and who performs all election  
13 services required by statute;

14 ~~F.]~~ D. "list compiler" means a contractor approved  
15 by the board of directors to compile and produce a qualified  
16 elector list for a conservancy district;

17 ~~G.]~~ E. "qualified elector" means an individual who  
18 owns real property within the benefited area of the conservancy  
19 district and who has provided proof of an ownership interest to  
20 one of the sources specified in Subsection B of Section 73-4-  
21 20.1 NMSA 1978 within the required time period, or who resides  
22 on and owns legal or equitable title in tribal lands and who is  
23 over the age of majority;

24 ~~H.]~~ F. "qualified ~~[elector's]~~ elector list" means  
25 the list compiled before each election that contains the

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1 individual names of all qualified electors; and

2 ~~[F-]~~ G. "residence" means a dwelling that lies  
3 partially or completely within the benefited area. "

4 Section 2. Section 73-14-20.1 NMSA 1978 (being Laws 1990,  
5 Chapter 48, Section 1, as amended) is amended to read:

6 "73-14-20.1. QUALIFIED ELECTOR LIST. --

7 A. The board of directors of ~~[the]~~ a conservancy  
8 district ~~may~~ contract for a list compiler before each election  
9 to compile and produce a qualified ~~[elector's]~~ elector list for  
10 the district. The list compiler shall deliver the completed  
11 list to the election director no later than forty-five days  
12 prior to a district election. An individual who purchases  
13 property ninety days prior to an election and whose name does  
14 not appear on the qualified ~~[elector's]~~ elector list shall not  
15 vote in that election. The individual ~~may~~ become certified to  
16 vote in a future election by filing his deed of title with the  
17 appropriate county clerk at least ninety days before the next  
18 conservancy district election.

19 B. Names of qualified electors shall be obtained  
20 from the records of the county clerk of the appropriate county,  
21 the appropriate county assessor of the appropriate county,  
22 records of the conservancy district or from the census bureau  
23 and enrollment records provided by the pueblos. The county  
24 assessor of the appropriate county, the county clerk of the  
25 appropriate county and the tribal representatives of the

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1 appropriate pueblos shall deliver to the election director all  
2 records regarding qualified electors of the benefited area no  
3 later than the last day of each March before a district  
4 election.

5 C. Updating the qualified ~~[elector's]~~ elector list  
6 shall consist of adding, for any new qualified elector who has  
7 purchased property in the district, the name, address and  
8 description of all property owned by the qualified elector in  
9 the benefited area and removing the name of any elector who is  
10 deceased or ~~[is no longer a qualified elector because he]~~ who  
11 no longer owns property within the benefited area.

12 D. Proof of ownership of land within the benefited  
13 area requires one of the following:

14 (1) a recorded deed or real estate contract  
15 indicating current ownership of land within the benefited area;

16 (2) an individual's name on county clerk  
17 records indicating a description of property the individual  
18 owns within the benefited area;

19 (3) an individual's name on a list compiled by  
20 the governing body of a pueblo within the benefited area  
21 indicating that the individual named is residing on and has  
22 legal or equitable title in the pueblo; or

23 (4) a current property tax bill indicating  
24 ownership of land within the benefited area.

25 E. ~~[The election officer or the election director~~

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1 ~~shall distribute to each polling place a current qualified~~  
2 ~~elector's list for the appropriate county. The election~~  
3 ~~officer or the election director shall distribute the qualified~~  
4 ~~elector's list to each polling place within a pueblo located~~  
5 ~~within the benefited area. A qualified elector may vote at any~~  
6 ~~one polling place in the pueblo or county where he owns land.]~~  
7 An individual who seeks to cast his vote but ~~[finds his]~~ whose  
8 name is not on the qualified ~~[elector's]~~ elector list shall not  
9 be allowed to vote in that election. "

10 Section 3. Section 73-14-24 NMSA 1978 (being Laws 1975,  
11 Chapter 262, Section 7, as amended) is amended to read:

12 "73-14-24. TIME AND PROCEDURE FOR ELECTION. --

13 A. On the first Tuesday after the first Monday in  
14 January prior to the middle Rio Grande conservancy district  
15 election, an election proclamation shall be published that  
16 includes a list of the offices for which a candidate may file,  
17 the date and place at which declarations of candidacy shall be  
18 filed and the date of the election. The election proclamation  
19 shall be published once in a newspaper of general circulation  
20 in the counties in which the election shall be held.

21 B. The members of the boards of directors created  
22 pursuant to the provisions of Sections 73-14-18 through  
23 ~~[73-14-32]~~ 73-14-30 NMSA 1978 shall be elected by mail-in  
24 ballot at an election ~~[held]~~ on the first Tuesday after the  
25 first Monday in June ~~[in 2001 and]~~ in each odd-numbered year

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1 ~~[thereafter]~~.

2 C. The elections for the members of the board of  
3 directors of ~~[the]~~ a conservancy district shall be conducted,  
4 counted and canvassed as provided in Sections 73-14-18 through  
5 ~~[73-14-32]~~ 73-14-30 and 73-14-84 through 73-14-86 NMSA 1978.

6 ~~[The polls may be opened and closed in the same manner as  
7 provided for the general election under the Election Code.]~~

8 ~~D. If only one candidate has filed a declaration of  
9 candidacy for a position to be filled at an election, no  
10 declared write-in candidate has filed for a position and there  
11 are no questions or bond issues on the ballot, only one polling  
12 place for the election may be designated. The one polling  
13 place may be located in the office of the election director or  
14 in the office of the middle Rio Grande conservancy district.]"~~

15 Section 4. Section 73-14-27 NMSA 1978 (being Laws 1975,  
16 Chapter 262, Section 10, as amended) is amended to read:

17 "73-14-27. ELECTION-- ~~[LOCATION OF POLLING PLACES]~~ NOTICE  
18 OF ELECTION ~~[CREATION OF ABSENT VOTER PRECINCT]~~. --

19 ~~[A.] For every conservancy district election, [the  
20 board of directors shall provide for adequate polling places  
21 within the boundaries of the conservancy district. In  
22 addition, the board of directors shall provide a polling place  
23 at the main office of the conservancy district and may provide  
24 such other locations as it deems necessary. The board of  
25 directors may also create absentee early voter and absent voter~~

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1 ~~precincts.~~

2 ~~B-]~~ notice of the election shall be published three  
3 times in a newspaper of general circulation within each county  
4 of the district. ~~[Each]~~ The notice shall state the time  
5 ~~[place]~~ and purpose of the election and that each qualified  
6 elector will receive a mail-in ballot prior to the election.  
7 The notice shall be published twenty, ten and five days before  
8 the election. "

9 Section 5. Section 73-14-28 NMSA 1978 (being Laws 1975,  
10 Chapter 262, Section 11, as amended) is amended to read:

11 "73-14-28. ELECTION JUDGES. --The election officer or  
12 ~~[the]~~ election director shall select ~~[two or more]~~ three  
13 election judges for ~~[each polling place established within the]~~  
14 a conservancy district. ~~[The election officer or the election~~  
15 ~~director shall also appoint absentee early voter and absent~~  
16 ~~voter precinct boards.]"~~

17 Section 6. Section 73-14-28.1 NMSA 1978 (being Laws 1996,  
18 Chapter 42, Section 12) is amended to read:

19 "73-14-28.1. ELECTION. --The board of directors of ~~[the]~~ a  
20 conservancy district shall conduct the election pursuant to  
21 ~~[Chapter 73, Article 14]~~ Sections 73-14-18 through 73-14-30 NMSA  
22 1978 and other applicable election laws or shall select an  
23 election director ~~[as defined in Section 73-14-20 NMSA 1978]~~ to  
24 provide election services. The election director shall operate  
25 pursuant to a contract approved by the secretary of state. The

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1 election ~~[may]~~ shall be conducted by ~~[emergency paper ballot,~~  
2 ~~electronic voting machine or any other state certified~~  
3 ~~tabulating voting machine]~~ mail-in ballot only. "

4 Section 7. Section 73-14-29 NMSA 1978 (being Laws 1975,  
5 Chapter 262, Section 12, as amended) is amended to read:

6 "73-14-29. FORM OF ~~[BALLOT]~~ ELECTION MATERIALS. -- The  
7 election officer or ~~[the]~~ election director shall oversee the  
8 preparation and printing of the ~~[ballots]~~ election materials for  
9 a conservancy district election. ~~[Ballots]~~ Election materials  
10 shall be prepared and printed at the expense of the conservancy  
11 district. ~~[The election officer or the election director shall~~  
12 ~~oversee the preparation of a separate ballot for each county~~  
13 ~~within the conservancy district or the preparation of one ballot~~  
14 ~~for use within the entire conservancy district.]~~ The board of  
15 directors shall approve the form of the ~~[ballot.~~ The ballot  
16 shall contain the numbered position or positions as the case may  
17 be to which directors are to be elected at the election, with  
18 the names of all candidates for each position listed under that  
19 designation] election materials. Election materials shall  
20 include:

21 A. ballots. The election officer or election  
22 director may prepare a separate ballot for each county within  
23 the conservancy district or one ballot for use within the entire  
24 conservancy district. For elections at which directors are  
25 selected, the ballot shall contain the numbered positions to

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1 which directors are to be elected at the election, with names of  
2 all candidates for each position listed under that designation;

3 B. official inner envelopes for use in sealing  
4 completed ballots;

5 C. official mailing envelopes for use in returning  
6 the official inner envelopes to the election officer or election  
7 director. The reverse of each official mailing envelope shall  
8 contain a form, to be executed by the qualified elector  
9 completing the ballot, that contains such affirmations as the  
10 election officer or election director shall prescribe;

11 D. ballot instructions describing how to complete  
12 and return ballots; and

13 E. official transmittal envelopes for use by the  
14 election officer or election director in mailing ballot  
15 materials."

16 Section 8. A new Section 73-14-29.1 NMSA 1978 is enacted  
17 to read:

18 "73-14-29.1. [NEW MATERIAL] MAILED BALLOTS--QUALIFIED  
19 ELECTOR LIST.--

20 A. The election officer or election director shall  
21 enter the following on the qualified elector list:

22 (1) the date of the mailing of the ballot to  
23 the qualified elector; and

24 (2) the date and time the completed ballot was  
25 received from the qualified elector by the election officer or

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1 election director.

2 B. No later than thirty days prior to the date of a  
3 conservancy district election, the election officer or election  
4 director shall mail a set of election materials to each  
5 qualified elector.

6 C. The qualified elector list is a public record  
7 open to public inspection in the election officer's or election  
8 director's office during regular office hours. "

9 Section 9. A new Section 73-14-29.2 NMSA 1978 is enacted  
10 to read:

11 "73-14-29.2. [NEW MATERIAL] MAILED BALLOTS--MANNER OF  
12 VOTING.--A qualified elector voting in a conservancy district  
13 election shall secretly mark the ballot, place it in the  
14 official inner envelope and securely seal the envelope. The  
15 elector shall then:

16 A. place the official inner envelope inside the  
17 official mailing envelope and securely seal the envelope; and

18 B. complete the form on the reverse of the official  
19 mailing envelope, which shall include an affirmation by the  
20 elector under penalty of perjury that the facts stated in the  
21 form are true. "

22 Section 10. A new Section 73-14-29.3 NMSA 1978 is enacted  
23 to read:

24 "73-14-29.3. [NEW MATERIAL] MAILED BALLOTS--RECEIPT OF  
25 BALLOTS BY ELECTION OFFICER OR ELECTION DIRECTOR.--

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1           A. The election officer or election director shall:

2                   (1) mark on each completed official mailing  
3 envelope the date and time of receipt;

4                   (2) record this information in the qualified  
5 elector list; and

6                   (3) safely keep the official mailing envelope  
7 unopened in a locked and sealed ballot box until it is  
8 transmitted to the election judges on election day or until it  
9 is canceled and destroyed in accordance with law.

10           B. The election officer or election director shall  
11 accept completed official mailing envelopes until 7:00 p.m. on  
12 election day. A completed official mailing envelope received  
13 after that time shall not be opened but shall be preserved by  
14 the officer or director until the time for election contests has  
15 expired. In the absence of a restraining order after expiration  
16 of the time for election contests, the election officer or  
17 election director shall destroy all late official mailing  
18 envelopes without opening or permitting the contents to be  
19 examined, cast, counted or canvassed.

20           C. At 5:00 p.m. on the Monday immediately preceding  
21 the date of election, the election officer or election director  
22 shall record the numbers of the unused ballots and shall  
23 publicly destroy all such unused ballots. The officer or  
24 director shall execute and maintain a certificate of  
25 destruction, which shall include the numbers on the ballots

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1 destroyed. "

2 Section 11. A new Section 73-14-29.4 NMSA 1978 is enacted  
3 to read:

4 "73-14-29.4. [NEW MATERIAL] HANDLING OF BALLOTS BY  
5 ELECTION JUDGES. --

6 A. Before opening an official mailing envelope, the  
7 election judges shall determine that the required information  
8 has been completed on its reverse.

9 B. If the qualified elector's signature is missing,  
10 the presiding judge shall write "Rejected" on the front of the  
11 official mailing envelope. The election officer or election  
12 director shall enter the qualified elector's name in the  
13 signature rosters and shall write the notation "Rejected -  
14 Missing Signature" in the "Notations" column of the signature  
15 rosters. The presiding judge shall place the official mailing  
16 envelope unopened in an envelope provided for rejected ballots,  
17 seal the envelope and write the qualified elector's name on the  
18 front of the envelope and deposit it in the locked ballot box.

19 C. An accredited challenger may examine the official  
20 mailing envelope and may challenge the ballot of any qualified  
21 elector because the official mailing envelope has been opened  
22 prior to being received by the election judges. Upon the  
23 challenge of a ballot, the election judges shall follow the same  
24 procedure as when ballots are challenged pursuant to the  
25 Election Code when a person attempts to vote in person. If a

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1 challenge is upheld, the official mailing envelope shall not be  
2 opened but shall be placed in an envelope provided for  
3 challenged ballots. The same procedure shall be followed in  
4 canvassing and determining the validity of challenged ballots  
5 pursuant to this section as with other challenged ballots.

6 D. If the official mailing envelopes have been  
7 properly subscribed and the qualified electors have not been  
8 challenged:

9 (1) the election judges shall open the  
10 official mailing envelopes and deposit the ballots in their  
11 still-sealed official inner envelopes in the locked ballot box;  
12 and

13 (2) the election officer or election director  
14 shall enter the voter's name and residence address as shown on  
15 the official mailing envelope in the signature rosters.

16 E. Prior to 7:00 p.m. on the day of the election,  
17 the election judges may either remove the ballots from the  
18 official inner envelopes and count and tally the results or  
19 count and tally the ballots on an electronic voting machine the  
20 same as if the qualified elector had voted in person. It is  
21 unlawful for any person to disclose the results of a count and  
22 tally or the registration on a voting machine of ballots prior  
23 to 7:00 p.m. on the day of the election."

24 Section 12. A new Section 73-14-29.5 NMSA 1978 is enacted  
25 to read:

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1 "73-14-29.5. [NEW MATERIAL] CANVASS--RECOUNT OR RECHECK--  
2 DISPOSITION.--If electronic voting machines are not used to  
3 register the mailed ballots, the ballots shall be canvassed,  
4 recounted and disposed of in the manner provided by the Election  
5 Code for the canvassing, recounting and disposition of emergency  
6 paper ballots. If voting machines are used to register the  
7 ballots, the ballots shall be canvassed and rechecked in the  
8 manner provided by the Election Code for the canvassing and  
9 recheck of ballots cast on a voting machine; provided, in the  
10 event of a contest, voting machines used to register the ballots  
11 shall not be rechecked but the ballots shall be recounted in the  
12 manner provided by the Election Code for the recounting of  
13 emergency paper ballots. A contest shall be conducted pursuant  
14 to the contest provisions of the Election Code. "

15 Section 13. A new Section 73-14-29.6 NMSA 1978 is enacted  
16 to read:

17 "73-14-29.6. [NEW MATERIAL] VOTING WHEN NO MAILED BALLOT  
18 RECEIVED.--

19 A. Except as provided in this section, no person  
20 shall vote in person in a conservancy district election subject  
21 to the provisions of Sections 73-14-18 through 73-14-30 NMSA  
22 1978.

23 B. At any time prior to 5:00 p.m. on the Monday  
24 immediately preceding the date of the election, a qualified  
25 elector who has not received a mailed ballot may execute, in the

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1 office of the conservancy district, a sworn affidavit stating  
2 that he did not receive the ballot. Upon receipt of the sworn  
3 affidavit, the election officer or election director shall issue  
4 the qualified elector a replacement ballot.

5 C. The election officer or election director, no  
6 later than forty-eight hours after the close of the election,  
7 shall remove the outer envelopes of the replacement ballots and,  
8 without removing or opening the inner envelopes, determine if a  
9 mailed ballot from a qualified elector was received by 7:00 p.m.  
10 on election day. Upon making that determination, the officer or  
11 director shall remove the inner envelope without opening it,  
12 retain the outer envelope with the other election returns and  
13 place the inner unopened envelope in a secure container to be  
14 transmitted to the election judges to be tallied and included in  
15 the election results.

16 D. The election officer or election director shall  
17 prescribe and furnish the affidavits, replacement ballots and  
18 necessary envelopes for purposes of this section."

19 Section 14. Section 73-18-2 NMSA 1978 (being Laws 1939,  
20 Chapter 148, Section 2) is amended to read:

21 "73-18-2. ADDITIONAL POWERS--DUTIES OF BOARD--CONTRACT  
22 INDEBTEDNESS A GENERAL OBLIGATION.--

23 [~~(1)~~] A. Except as provided in Section 73-18-9.2  
24 NMSA 1978, any district, in addition to all other powers  
25 [~~heretofore~~] previously conferred by law upon districts, is

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1 empowered to cooperate with the United States under the  
2 reclamation law, and in the exercise of [~~such~~] that power, may  
3 enter into a reclamation contract [~~or contracts~~] for the purpose  
4 of the construction of irrigation works, including ancillary  
5 works and drainage works to maintain the irrigability of lands  
6 within any such district; for the purchase, extension, operation  
7 or maintenance of constructed works; for the assumption as  
8 principal or guarantor of indebtedness to the United States on  
9 account of the cost of construction or operation and maintenance  
10 of irrigation, drainage and ancillary works; for rental of water  
11 or otherwise securing a water supply for district lands; for  
12 acceptance of appointment or designation of the district as  
13 fiscal agent of the United States to make collections of  
14 [~~monies~~] money for or on behalf of the United States in  
15 connection with any federal reclamation project; or for [~~all or~~]  
16 any one [~~or more~~] of [~~said~~] those purposes [~~and~~]. All payments  
17 to become due to the United States under any reclamation  
18 contract [~~heretofore or hereafter~~] entered into between a  
19 district and the United States shall be paid by revenue derived  
20 from an annual assessment upon the real property of the district  
21 [~~and~~]. All the real property in the district [~~shall be and~~  
22 ~~remain~~] is liable to be assessed for such payments until fully  
23 made. It [~~shall be~~] is the duty of the board of a contracting  
24 district, notwithstanding any other provision of the Conservancy  
25 Act, to make and establish all levies, assessments, tolls or

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1 charges to meet each year the contract indebtedness and  
2 obligation as [~~the same~~] they may be provided for in any  
3 reclamation contract [~~heretofore or hereafter~~] entered into by a  
4 contracting district and to do [~~any and~~] all acts necessary to  
5 carry out the provisions of any [~~such~~] reclamation contract.

6 [~~(2)~~] B. A contracting district may:

7 [~~(a) may~~] (1) convey to the United States  
8 land or water rights or any interest [~~therein~~] in them, either  
9 without monetary consideration [~~therefor~~] for them or in partial  
10 consideration of the privileges derived from a reclamation  
11 contract or for other consideration;

12 [~~(b) may, and~~] (2) if so agreed in a  
13 reclamation contract, shall withhold water from lands which  
14 under the terms of the reclamation law, a reclamation contract  
15 or rules and regulations thereunder are not entitled to receive  
16 water, and from water users or the lands of water users  
17 delinquent in the payment of any assessment, toll, rental or  
18 other charge, but this remedy shall be in addition to all other  
19 remedies available for the enforcement of a reclamation contract  
20 or collection of assessments, tolls, rentals or other charges;  
21 and

22 [~~(c) may~~] (3) accept the provisions of any  
23 existing or future act of congress applicable to [~~such~~] the  
24 district.

25 [~~(3)~~] C. The board of directors of [~~any~~] a

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1 contracting district is [~~hereby~~] vested with all powers  
2 necessary and requisite for the accomplishment of the purposes  
3 for which the district is organized and for which the  
4 reclamation contract has been entered into by the district and  
5 capable of being delegated to it by the New Mexico legislature  
6 [~~of the state of New Mexico and~~]. No enumeration of particular  
7 powers in the Conservancy Act or in [~~this~~] the Conservancy  
8 District-Reclamation Contract Act granted shall be construed to  
9 impair any general grant of power [~~herein~~] contained [~~nor~~] in  
10 the Conservancy District-Reclamation Contract Act or to limit  
11 any such grant to power [~~or powers~~] of the same class [~~or~~  
12 ~~classes~~] as those so enumerated. "

13 Section 15. A new section of the Conservancy District-  
14 Reclamation Contract Act, Section 73-18-9.2 NMSA 1978, is  
15 enacted to read:

16 "73-18-9.2. [NEW MATERIAL] CONTRACTING DEBT TO BE PAID  
17 THROUGH AD VALOREM ASSESSMENTS--ELECTION REQUIRED. --A  
18 conservancy district created prior to 1930, situate in four or  
19 more counties and consisting of more than one hundred thousand  
20 acres shall not enter into an agreement, including a reclamation  
21 contract, issue bonds or otherwise incur any debt that will be  
22 repaid, in whole or in part, by receipts from ad valorem  
23 assessments levied by the district unless the question is first  
24 approved by the qualified electors of that district in a mail-in  
25 ballot election conducted pursuant to the provisions of Sections  
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1 73-14-18 through 73-14-30 and 73-14-84 through 73-14-86 NMSA  
2 1978. An election required by this section may be held in  
3 conjunction with a regular conservancy district election at the  
4 time prescribed in Subsection B of Section 73-14-24 NMSA 1978 or  
5 may be a special election called for that purpose by the board  
6 of the conservancy district. "

7 Section 16. Section 73-18-24 NMSA 1978 (being Laws 1939,  
8 Chapter 148, Section 25) is amended to read:

9 "73-18-24. [~~Designation of Act. This Act~~] SHORT TITLE. --  
10 Sections 73-18-1 through 73-18-24 NMSA 1978 may be cited as the  
11 "Conservancy District-Reclamation Contract Act". "

12 Section 17. REPEAL. -- Sections 73-14-31 through 73-14-31.3  
13 NMSA 1978 (being Laws 1975, Chapter 262, Section 14, Laws 1996,  
14 Chapter 42, Sections 15 and 16 and Laws 1999, Chapter 168,  
15 Section 8, as amended) are repealed.

16 Section 18. EFFECTIVE DATE. -- The effective date of the  
17 provisions of this act is July 1, 2003.